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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,272	08/03/2001	Scott Matsumoto	Xtremesoft/Patent	1488

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EXAMINER

NGUYEN BA, HOANG VU A

ART UNIT PAPER NUMBER

2122

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/922,272	Applicant(s) MATSUMOTO ET AL.	
	Examiner Hoang-Vu A Nguyen-Ba	Art Unit 2122	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/24/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the application filed August 3, 2001.
2. Claims 1-12 have been examined.

Drawings

3. The drawings, filed concurrently with the above application, are approved by the examiner.

Claim Objections

4. Claims 1 and 2 are objected to because of the following informalities:
 - a. Claim 1: the semi colon punctuation “;” at the end of the claim should be replaced with a period – . – to mark the end of the claim.
 - b. Claim 2: the conjunction “and” at the end of line 9 should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 4, 6, 9, 11 and 12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 in group 1/4 recites the limitation “the merged events” at lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites that the limitation "creating a transaction" further comprises a series of "determining" sub-steps. It is unclear what the determining sub-steps encompass. The term "determining" infers a process of selecting an item among several. Does "determining a begin event," or "determining an end event," or "determining a transaction name" suggest that there are several "begin events," or "end events," or "transaction names" to choose from? The "determining" language is thus vague and indefinite.

Claim 9 recites the limitation "wherein collecting a set of transactions to form a real-time transactional model of the business transaction processing further comprises" at lines 1-3. This step of collecting a set of transactions was not claimed in either claim 1 or claim 2. Since this step was not yet claimed in the preceding claim, it cannot **further** comprise the sub-steps claimed in claim 9.

Claim 11 (line 3) and 12 (line 2) recite the limitation "the system". There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the set of transactions" at lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections – 35 U.S.C. § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mock-Gergeleit-Nett, Monitoring Distributed Real-time Activities in Distributed Component Object Model.

Claim 1

Mock-Gergeleit-Nett discloses at least:

detecting whether an event occurs in the first application (see at least sub-section 3.1), and for each event detected:

a) capturing event data values corresponding to the event, wherein the event data values identify the application that generated the event and the time of the event generation (see at least sub-section 3.1); and

b) collecting the event and the associated event data in a first event buffer (see at least sub-section 3.1); and

correlating events from the first event buffer into a correlation buffer, wherein the events in the correlation buffer are ordered according to the time of event generation (see at least sub-sections 3.2 and 3.3).

Claim 2

Mock-Gergeleit-Nett discloses at least:

detecting whether an event occurs in the first application (see at least sub-section 3.1), and for each event detected:

a) capturing event data values corresponding to the event, wherein the event data values identify the application that generated the event and the time of the event generation (see at least sub-sections 2 and 3.1); and

b) collecting the event and the associated event data in a first event buffer (see at least sub-sections 3.2 and 3.3);

associating each event to at least one other event to create a merged event (see at least sub-sections 3.2 and 3.3); and

creating a transaction from the merged event, the transaction comprising a start, an end, and a duration, wherein a transaction is a single, atomic operation performed on behalf of a particular user (see at least sub-sections 3.2 and 3.3).

Claim 3

The rejection of base claim 1 or 2 is incorporated. Mock-Gergeleit-Nett further discloses *collecting a set of transactions to form a real-time transactional model of the business transaction processing (see at least sub-sections 3.2 and 3.3).*

Claim 4

The rejection of base claim 1 or 2 is incorporated. Mock-Gergeleit-Nett further discloses *wherein creating a transaction further comprises:*

creating a model of the components of the application from the merged events (see at least sub-sections 3.2 and 3.3);
and

creating the transaction from the model and other merged events (see at least sub-sections 3.2 and 3.3).

Claim 5

The rejection of base claim 1 or 2 is incorporated. Mock-Gergeleit-Nett further discloses:

detecting whether an event occurs in the second application, and for each event detected (see at least sub-section 3.1):

a) capturing event data values corresponding to the event,

wherein the event data values identify the application that generated the event and the time of the event generation (see at least sub-sections 2, 3.2);; and

b) collecting the event and the associated event data in a second event buffer (see at least sub-sections 3.2 and 3.3); and

combining the events from the first event buffer and the second event buffer into a correlation buffer, wherein the events in the correlation buffer are ordered according to the time of event generation (see at least sub-sections 3.2 and 3.3).

Claim 6

The rejection of base claim 1 or 2 is incorporated. Mock-Gergeleit-Nett further discloses *wherein creating a transaction further comprises:*

determining a begin event of the transaction (see at least sections 2, 3.2 and 3.3);

determining a component employed by the transaction (see at least sections 2, 3.2 and 3.3);

determining an end event of the transaction (see at least sections 2, 3.2 and 3.3);

determining a transaction duration (see at least sections 2, 3.2 and 3.3);
and

determining a transaction name (see at least sections 2, 3.2 and 3.3).

Claim 7

The rejection of base claim 1 or 2 and intervening claim 6 is incorporated. Mock-Gergeleit-Nett further discloses *wherein determining a begin event further comprises determining whether an event is a root object method call, and if the event is a root*

object method call, assigning the root object method call as the begin event of the transaction (see at least sections 3.2 and 3.3).

Claim 8

The rejection of base claim 1 or 2 and intervening claim 6 is incorporated. Mock-Gergeleit-Nett further discloses *wherein determining an end event further comprises determining whether an event is a method return event and if the event is a method return event, assigning the method return event as the end event of the transaction (see at least sections 3.2 and 3.3).*

Claim 9

The rejection of base claim 1 or 2 and intervening claim 6 is incorporated. Mock-Gergeleit-Nett further discloses *wherein collecting a set of transactions to form a real-time transactional model of the business transaction processing further comprises:*

partitioning transactions into transaction sets based on the transaction name
(see at least sections 3.1, 3.2 and 3.3); and

determining an active number of transactions and a completed number of transactions (see at least sections 3.1, 3.2 and 3.3).

Claim 10

The rejection of base claim 1 or 2 is incorporated. Mock-Gergeleit-Nett further discloses:

detecting a system event generated by an operating system, wherein the system event provides data descriptive of a process executing a transaction (see at least sections 3.1, 3.2 and 3.3); and

correlating the system event with the transaction (see at least sections

3.1, 3.2 and 3.3).

Claim Rejections – 35 USC § 103

9. The following is a quotation of the 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mock-Gergeleit-Nett in view of Sridharan-Dasarathy-Mathur, On Building Non-intrusive Performance Instrumentation Blocks for CORBA-based Distributed Systems.

Claim 11

The rejection of base claim 1 or 2 and intervening claim 10 is incorporated. Mock-Gergeleit-Nett further discloses *collecting a series of system events* (see at least sections 3.2 and 3.3). Mock-Gergeleit-Nett does not specifically disclose *generating a performance curve of the system using the system events*. However, Sridharan-Dasarathy-Mathur discloses a non-intrusive, reusable framework for collecting performance statistics of CORBA-based distributed systems (see Abstract and section 5). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the information from performance statistics collecting as taught by Sridharan-Dasarathy-Mathur to improve

the performance of monitoring distributed real-time activities in Distributed Component Object Model as taught by Mock-Gergeleit-Nett.

Claim 12

The rejection of base claim 1 or 2 and intervening claims 10, 11 is incorporated. Mock-Gergeleit-Nett does not specifically disclose *correlating the set of transactions and the performance curve of the system to evaluate the business transaction processing*. However, Sridharan-Dasarathy-Mathur discloses a non-intrusive, reusable framework for collecting performance statistics of CORBA-based distributed systems (see Abstract and section 5). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the information from performance statistics collecting as taught by Sridharan-Dasarathy-Mathur to improve the performance of monitoring distributed real-time activities in Distributed Component Object Model as taught by Mock-Gergeleit-Nett.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Antony Nguyen-Ba, whose telephone number is (703) 305-0103. The examiner can normally be reached on Tuesday - Friday from 6:00 – 4:15 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam, can be reached at (703) 305-4552.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

Central Fax Number

(703) 872-9306

A handwritten signature in cursive script, reading "Hoang Anton Nguyen Ba".

**ANTONY NGUYEN-BA
PRIMARY EXAMINER**

Art Unit 2122

June 22, 2004